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No. 403

In the Supreme Court of the United States

OCTOBER TERM, 1961

ALVIN B. SAWYER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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CITATIONS

Case:

Holland v. *United States*, 348 U.S. 121 6

Statute:

26 U.S.C. 5686, 72 Stat. 1411 2

614743—61

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a–14a; R. II, 7–21) is not yet reported.

JURISDICTION

The judgments of the court of appeals were entered on August 19, 1961 (R. II, 23, 28, 33). The petition for a writ of certiorari was filed on September 12, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence supports petitioner's conviction for possession of sugar intended for use in violation of the internal revenue laws.

2. Whether evidence as to a hidden distillery, about 500 yards from petitioner's garage where the sugar was found, was admissible.

3. Whether evidence that government agents destroyed two distilleries in the vicinity of petitioner's premises within 12 months prior to his arrest was admissible.

STATUTE INVOLVED

26 U.S.C. 5686, 72 Stat. 1411, provides:

> (a) General—It shall be unlawful to have or possess any liquor or property intended for use in violating any provision of this chapter or regulations issued pursuant thereto, or which has been so used, and every person so having or possessing or using such liquor or property, shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

STATEMENT

Petitioner and co-defendants Griffin and Swain were convicted, in the District Court for the Eastern District of North Carolina, of unlawfully possessing property "intended for use in violating the provisions of chapter 51 of Title 26, United States Code, or regulations issued pursuant thereto, to wit, 1,260 pounds of sugar and nine 5-gallon jugs" (Pet. App. 1a; R. I, 102). Petitioner was sentenced to imprisonment for one year and a $500 fine (R. I, 1–3). Following the conviction and sentence, the probation officer moved for revocation of petitioner's probation on prior convictions for violations of the internal revenue laws, and probation was revoked (R. II, 4, 26; R. I, 3–9, 2). On appeals in all three

cases, the court of appeals affirmed (R. II, 4, 26, 31, 23, 28, 33).

Pertinent evidence adduced at the trial in the present case may be summarized as follows:

State officers Halstead and Baum and federal officer Gaskill, armed with a search warrant, went early on August 14, 1959, to the petitioner's premises, on the east side of Highway No. 17 about 8 miles north of Elizabeth City, North Carolina (R. I, 11, 42, 47, 51). There was a house and double garage on the premises. The garage was about 40 feet south of the house and about 100 feet east of the highway (R. I, 15). The officers testified that about 2:30 a.m., they saw proceeding south on highway No. 17 an automobile the lights of which were turned off when about 200 or 300 yards away from the entrance to petitioner's premises. The automobile was then driven into petitioner's garage after one of the occupants alighted from the car and opened the garage doors (R. I, 12, 24, 25, 31, 47, 51–52). (The car was registered in a fictitious name, R. I, 23–24). The officers saw and heard the occupants of the car (the co-defendants Griffin and Swain), both of whom had flashlights, unloading and counting sacks and cartons of sugar within the garage (R. I, 12–13, 47–48). About 1,260 pounds of sugar and nine 5-gallon jugs with drippings from non-taxpaid whiskey were unloaded in the garage (R. I, 13–14, 48–49). Griffin and Swain were arrested and turned over to officer Gaskill (R. I, 17, 52).

Officers Halstead and Baum then knocked on the door of petitioner's house and stated that they wanted

to talk to him about the sugar in the garage. He denied knowing anything about it (R. I, 17). The officers testified that petitioner asked Griffin and Swain what they meant by bringing the materials to his garage and they answered, "We thought it was the place to bring it to but I reckon we were wrong." (R. I, 17, 50, 52). Griffin and Swain stated that they did not know petitioner (R. I, 36, 50). When informed that a warrant would be issued against him, petitioner agreed to (and did) surrender to the authorities at 9 o'clock the next morning (R. I, 52, 63). At the time of apprehension petitioner did not have a wholesale or retail store (R. I, 54–55).

A canal north of petitioner's house runs in an east-west direction about 100 to 150 feet from the garage (R. I, 37, 43). The officers found wheelbarrow tracks leading from petitioner's garage to the back of the canal where a green boat was moored (R. I, 18, 21, 53-54). The officers testified over objection that at a point about 400 yards down the canal they discovered a camouflaged entrance concealing a path and boarded walkway leading approximately 75 yards through the woods to an illicit distillery (R. I, 19, 21, 37). At the entrance to the still path, dark green paint similar to that on the petitioner's boat had rubbed off on a tree (R. I, 53–54). Twenty-six 55-gallon barrels containing spent mash and 40 pounds of sugar were found at the site of the still (R. I, 19, 53). Agent Halstead testified over objection that, as a result of his experience in examining distilleries, it was his opinion that

50 pounds of sugar were required to "mash in"[1] each of the twenty-six 55-gallon barrels, or a total of 1,300 pounds; and that the 1,260 pounds of sugar found at petitioner's garage plus the 40 pounds at the still site totaled 1,300 pounds (R. I, 19–20).

Officer Gaskill testified over objection that, within the 12 months prior to petitioner's arrest, he had assisted in the destruction of two distilleries in this area, one of which was twice as far from petitioner's home as the one found on August 14, 1959. The court instructed, "Gentlemen, this evidence is admitted for the sole purpose and will be considered by you only as it may relate to the intent of the defendants" (R. I, 56).

In its final charge to the jury, the court instructed in part as follows (R. I, 102, 104–105):

> To convict the defendants, or either of them, as charged in the indictment the government must convince you beyond a reasonable doubt of two things: first, that the defendants, or either of them, had in their possession the property described in said count; and, second, that such property was intended for use in violating the Internal Revenue laws. * * *
>
> * * * During the course of the trial evidence that illegal distilleries were operating in the general locality of the premises owned and occupied by the defendant Sawyer within one year prior to the date of the arrests in this case was admitted for a restricted purpose. The defendants are not indicted for the possession or op-

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[1] *I.e.*, needed in the mixture required to make mash (see Pet. App., 5a).

eration of any illicit still and evidence that illegal distilleries were operating within this locality is not to be considered by you as indicating that the defendants, or either of them, possessed, operated or had any interest in such stills. You may consider such evidence only in determining the state of mind or intent with which such materials were possessed by the defendants, if you should find that such materials were in fact possessed by them.

ARGUMENT

1. Petitioner argues that, since the evidence against him was largely circumstantial and did not exclude every reasonable hypothesis but that of guilt, his conviction cannot stand (Pet. 10–11). This, however, is not the federal rule. *Holland* v. *United States,* 348 U.S. 121, 139–140, makes it clear that circumstantial evidence is in the same category as direct evidence when the jury decides as to the existence of a reasonable doubt. All that is required is that there be proof beyond a reasonable doubt. Petitioner did not except to the charge on circumstantial evidence, and the strong circumstantial evidence detailed in the Statement, *supra,* was such that the jury could fairly find guilt beyond a reasonable doubt. The court of appeals so held, after a careful and detailed review of the evidence (Pet. 2a–10a). There is no occasion for further review of the sufficiency of the evidence.

2. The trial court did not err in permitting testimony as to the officers' discovery of the illicit distillery found in the woods approximately 500 yards from petitioner's home, shortly after his arrest (see Pet. 11).

The challenged evidence was relevant as bearing upon the petitioner's intent to use the 1,260 pounds of sugar in the garage. The jury could reasonably infer an intent to use the sugar for the still, to which petitioner had ready access by boat, especially since petitioner was not operating a store where such a large amount of sugar might be held for sale. Moreover, the sugar unloaded in the garage, together with the smaller quantity already at the still, was shown to be sufficient for the operation of that particular still. *Supra*, pp. 4–5.

3. Neither was there reversible error in admitting evidence as to destruction of two distilleries in this area within 12 months preceding petitioner's arrest (see Pet. 11–13). This, too, had a bearing on intent. The court made it clear in its charge that the jury could consider the evidence "* * * only in determining the state of mind or intent with which such materials were possessed by the defendants, if you should find that such materials were in fact possessed by them" (R. I, 104–105).[2]

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[2] Since petitioner's conviction for a federal offense in No. 8265 was sufficiently supported by competent evidence, as we have shown, revocation of his probation in Nos. 8263 and 8264 was proper. One of the probationary conditions was that he should "[r]efrain from the violation of any State and Federal penal laws" (R. II, 2).

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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